

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

BRISELIDA R.,

Plaintiff,

v.

**5:22-CV-1290
(FJS/ML)**

**MARTIN J. O'MALLEY, Commissioner
of Social Security,**

Defendant.

APPEARANCES

**LAW OFFICES OF KENNETH
HILLER, PLLC**
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Amherst, New York 14226
Attorneys for Plaintiff

OF COUNSEL

JUSTIN M. GOLDSTEIN, ESQ.

SOCIAL SECURITY ADMINISTRATION
Office of Program Litigation, Office 2
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Baltimore, Maryland 21235
Attorneys for Defendant

HEETANO SHAMSOONDAR, ESQ.

SCULLIN, Senior Judge

DECISION AND ORDER

Plaintiff brought this action pursuant to 42 U.S.C. § 405(g). She sought review of the final decision of the Commissioner of Social Security denying her application for Disability Insurance Benefits. Plaintiff alleged that the Commissioner's decision was not supported by substantial evidence and failed to adhere to the correct legal standards. The Court referred the

matter to Magistrate Judge Lovric for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c).

In his Report-Recommendation issued on November 20, 2023, *see* Dkt. No. 15, Magistrate Judge Lovric recommended that the Court grant Plaintiff's motion for judgment on the pleadings, *see* Dkt. No. 9, and deny the Commissioner's motion for judgment on the pleadings, *see* Dkt. No. 13. Magistrate Judge Lovric further recommended that the case be remanded to the Commissioner for reconsideration in light of his findings.

Magistrate Judge Lovric concluded that the Administrative Law Judge ("ALJ") who reviewed Plaintiff's case failed to provide a proper explanation for the weight he assigned the expert opinions and failed to provide sufficient explanation for his evaluation of Plaintiff's activities of daily living. Magistrate Judge Lovric also concluded, however, that the ALJ did not err by failing to supplement the record with additional evidence from Plaintiff's mental health care providers. He recommended that the ALJ should consider supplementing the record on remand. In conclusion, Magistrate Judge Lovric recommended remand to the ALJ "to explain the supportability and consistency factors more fully with regard to the mental health opinion evidence, evaluate Plaintiff's daily activities in the context of the broader record, and further develop the record as appropriate." *See* Dkt. No. 15 at 22 (citation omitted).

Neither party objected to the Report-Recommendation, and the time for filing such objections has passed. After examining the record, this Court has determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice; and, therefore, the Court accepts and adopts the Report-Recommendation for the reasons stated therein.

Accordingly, the Court hereby

ORDERS that Magistrate Judge Lovric's Report-Recommendation, *see* Dkt. No. 15, is **ACCEPTED** and **ADOPTED**; and the Court further

ORDERS that Plaintiff's motion for judgment on the pleadings, *see* Dkt. No. 9, is **GRANTED**; and the Court further

ORDERS that Defendant's motion for judgment on the pleadings, *see* Dkt. No. 13, is **DENIED**; and the Court further

ORDERS that this matter is remanded to the Commissioner pursuant to sentence four of 42 U.S.C. § 405(g) for proceedings consistent with this opinion and the findings in Magistrate Judge Lovric's Report-Recommendation, and the Court further

ORDERS that the Clerk of the Court shall enter judgment in favor of Plaintiff and close this case.

IT IS SO ORDERED.

Dated: February 8, 2024
Syracuse, New York



Frederick J. Scullin, Jr.
Senior United States District Judge